IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 2055/2004

NATIONAL INSURANCE CO. LTD.
v
SMT. HASEENA AND OTHERS.

Date of Judgment: 14th September, 2006

Hon'ble Mr. Justice R. S. Chauhan

Ms. Manju Jain , for the appellant.
Ms. Preeti Mehta for the respondents.

By Court:

The appellant – National Insurance Company has challenged the award dated 30.7.04 passed by the Commissioner Workmen Compensation, Ajmer whereby he had awarded a compensation of Rs. 4,48,000/- alongwith interest @ 12% per annum to the claimants.

The brief facts of the case are that Babloo @ Nadeem was working as a driver on trailer No. RJ 01 – G - 3106, which was owned by Badruddin, the respondent No. 8 before this Court. On 24.5.03 while the vehicle was parked near the village Chanderia in District Chittorgarh, Baboo was cooking his food near the vehicle on a stove. Because the

stove burst, the vehicle also caught fire. Consequently, Babloo was badly burnt and during the course of treatment he expired on 20.6.03. His wife, his father, his mother, his minor child and his brothers and sisters filed a claim petition as they had lost the sole bread earner of the family. After hearing all the three parties, namely, the claimants, the owner and the Insurance Company, vide order dated 30.7.04, the learned Commissioner awarded a compensation of Rs. 4,48,000/- alongwith interest @ 12% per annum. In case the said amount was not deposited within a period of one month, the interest rate was to be increased to 18% per annum. Hence, this appeal before this Court.

Ms. Manju Jain, the learned counsel for the appellant, has raised two contentions. Firstly, that the Insurance Company cannot be saddled with the liability of paying the interest on the compensation amount. Secondly, in case the Insurance Company is held to be liable for the payment of the said interest, a penal interest cannot be imposed under the Act.

On the other hand, Ms. Preeti Mehta, the learned counsel for the respondents has argued that until and unless the Insurance Company excludes itself from liability of payment of interest by a clear stipulation to this effect in the policy, the insurance Company would be held liable for the payment of the interest. Secondly, that the imposition of the penal interest is within the discretion of the learned Commissioner. Therefore, the imposition of the penal interest is legally justified.

We have heard both the learned counsels and have perused the impugned award.

The issue whether the Insurance Company is liable for the payment of interest on the compensation amount is no longer res integra. The said issue has been discussed recently by the Apex Court in the case of New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya (2006 (2) T.A.C. 321 (S.C.)). According to their Lordships unlike the requirement of provisions of the Motor Vehicle Act there is no provision in the Workmen Compensation Act for an employer to take up the Insurance policy. Therefore, the only prohibition contained in

Workman Compensatin Act is contained in Section 17 which deals with a contract or agreement between a workman and employer. According to the said Section a contract or agreement whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act. Hence, the workman is not permitted to contract out and to waive the liability of an employer under this Act. But, the employer and the Insurance Company are free to contract the terms of the Insurance as per their own volition. According to their Lordships of the Supreme court, it is for the Insurance Company to expressly state its non-liability for the payment of interest payable under the Workmen Compensation Act, otherwise the Insurance Company will be held liable for such payment. In the case of Harshadbhai (supra), the insurance Company had clearly expressed its intention by incorporating a stipulation in the Insurance policy for non-payment of the interest. Under those circumstances, the Apex Court had held that the Insurance

Company would not be liable. In the case of Ved Prakash Garg Vs. Premi Devi (1998 ACJ 1), the Apex Court had clearly stated that where the Insurance Company has insured the employer-owner of the vehicle against the compensation under the Workman Compensation Act, it would be liable for the payment of the interest upon compensation against the employer. In the present case before us, the learned counsel for the Insurance Company has not been able to prove that the Insurance Company had expressly stipulated its non-liability for the payment of the interest. According to the Insurance policy, there is no such stipulation. In the absence of such stipulation, the Insurance Company is liable to pay the interest as directed by the learned Commissioner.

However, it is true that under the Workman Compensation Act, no provision empowers the Commissioner to impose a penal interest on the Insurance Company or the employer in case the compensation awarded is not deposited within the stipulated period. In case the amount is not deposited a penalty can be imposed upon the employer but not upon the Insurance Company. But, the learned counsel for the

respondents informs this Court that the compensation was paid within the stipulated period. Therefore, the part of the direction for payment of penal interest need not be interfered with.

In the result the appeal is partly allowed and while the Insurance Company is directed to pay the interest amount, the part of the impugned order directing the payment of penal interest is quashed and set aside.

(R.S. CHAUHAN) J.

MRG.